



April 7, 2000

Mr. Nick Todaro
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-1371

Dear Mr. Todaro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134956.

The City of Midland received two requests for a specified police report on disorderly conduct. You seek to withhold the information responsive to the request under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.

Section 552.108(a)(1) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You advise that the requested information relates to two pending prosecutions. Based on your representations, we conclude that except as noted below, you may withhold the submitted information under section 552.108(a)(1).

Please note that section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The city must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that “basic information” includes a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing what is basic information under the *Chronicle* case). In our

opinion, the information you have indicated the city will release in connection with its section 552.108 claim does not contain a sufficiently detailed description of the offense. You must release a detailed description of the offense in order to satisfy the requirement of release of "basic information."

The description and identity of the complainant is also an element of basic information which may not be withheld under section 552.108. *See* Open Records Decision No. 127. You seek to withhold the complainant's identity under the informer's privilege which is an aspect of the section 552.101 exception. *See* Open Records Decision Nos. 515 (1988), 191 (1978). However, because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). Information one of the requestors, the subject of the complaint, has submitted, indicates that he is aware of the complainant's identity. Therefore, the complainant's identity may not be withheld under the informer's privilege, but rather must be released as an element of "basic information which may not be withheld under section 552.108.

The submitted information also contains driver's license numbers which are subject to section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

You must withhold the driver's license numbers pursuant to section 552.130.

Since, with the exception of "basic information," we have permitted you to withhold the requested information under section 552.108(a)(1) and 552.130, we do not address your section 552.103 claim except to note that "basic information" may not be withheld under that exception either. *See, e.g.,* Open Records Decision No. 597 (1991).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

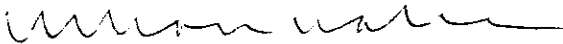
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 134956

Encl. Submitted documents

cc: Mr. Hal L. Kempf
P.O. Box 10927
Midland, Texas 79702
(w/o enclosures)